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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,028	01/17/2002	Gerald A. DiBattista	Mo-6937/MD-01-87-KU	2112

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EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/053,028

Applicant(s)

DIBATTISTA ET AL.

Examiner

Joseph F Edell

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 19-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to a molded article, classified in class 297, subclass 451.11.
  - II. Claims 19-34, drawn to a molded article by a process of blow molding, classified in class 264.
  - III. Claims 35 and 36, drawn to a method of preparing a molded article, classified in class 264.
2. The inventions are distinct, each from the other because of the following reasons: Inventions Group I, Group II, and Group III are related as product made and processes of making. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed in Group I can be made by a materially different process such as two piece over-molding.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
3. During a telephone conversation with Mr. Franks on 27 March 2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-18.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 19-36 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because "attachment means" should be removed. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

6. Claims 1, 11, and 16-18 are objected to because of the following informalities: subheadings (a), (b), (i), and (ii) should be removed from the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "its" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 5-9, 12, 15, and 18, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,577,907 to Talmon et al. in view of U.S. Patent No. 6,382,728 B1 to Buono.

Talmon et al. disclose a molded article that is basically same as the recited in claims 1, 2, 5, 5-9, 12, 15, and 18, as best understood, except the rigid support lacks perforations for portions of a flexible member as well as integral film and polymeric foam used with the flexible member, as recited in the claims. See Figures 1-7 of Talmon et al. for the teaching that the molded article has a rigid support 14 (Fig. 2), a molded

flexible member 12 (Fig. 2) in abutting relationship with a portion of the rigid support and has a hollow interior, a fabric covering 22 (Fig. 2) on the flexible member, and a molded-in texture 20 (Fig. 2). Buono shows a molded article similar to that of Talmon et al. wherein the rigid support (Fig. 9) has a plurality of perforations with edges and a flexible member 152 (Fig. 12A) with an integrally molded film formed on the outer surface and a polymeric foam material wherein the flexible member is fastened to the rigid support by embedding flexible member material through edge portions of the perforations (see Figure 10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the molded article of Tamon et al. such that the hollow interior of the flexible member may be filled with polymeric foam and has an integrally molded film on the outer surface, and the rigid support has a plurality of perforations wherein the edge portions are embedded in the flexible member material extending therethrough, such as the molded article disclosed in Buono. One would have been motivated to make such a modification in view of the suggestion in Buono that the flexible member embedded in perforations of the rigid support allows for a flexible member that is attached in a simple and consistent manner.

11. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talmon et al. in view of Buono as applied to claims above 1, 2, 5-9, 12, 15, and 18, as best understood.

Talmon et al., as modified, disclose a molded article that is basically same as the recited in claims 3 and 4 except the materials of the rigid support and flexible member are not specifically recited, as recited in the claims. Although the material is not

specifically recited, modifying the material would have been obvious at the time the invention was made because the use of preferred materials discovered by routine experimentation is ordinarily with the skill of the art. Further, it would have been an obvious matter of design choice to modify the material, since the applicant has not disclosed that having the specific material solves any stated problem or is for any particular purpose and it appears the molded article would perform equally well with any well know material used in the seat art.

12. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talmon et al. in view of Buono as applied to claims 1, 2, 5-9, 12, 15, and 18, as best understood above, and further in view of U.S. Patent No. 5,711,575 to Hand et al.

Talmon et al., as modified, disclose a molded article that is basically same as the recited in claims 10 and 11 except the flexible member lacks a means for reversibly increasing pressure within the hollow member through fluid communication via a pressure regulating valve, as recited in the claims. Hand et al. show a molded article similar to that of Talmon et al. wherein the hollow interior has a means for reversibly increasing pressure with a hollow interior, a pressure regulating valve the provides fluid communication with the hollow interior, and a heated or cooled liquid is introduced into the hollow interior. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the molded article of Talmon et al. such that the flexible member has a means for reversibly increasing the pressure within the hollow interior having a pressure regulating valve that provide communication with the hollow interior, and a heated or cooled liquid reversibly introduced into the

hollow member through the pressure regulating valve, such as the molded article disclosed in Hand et al. One would have been motivated to make such a modification in view of the suggestion in Hand et al. that the means for reversibly increasing the pressure allows for the accommodation of different sized users.

13. Claims 13, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talmon et al. in view of Buono as applied to claims 1, 2, 5-9, 12, 15, and 18, as best understood above, and further in view of U.S. Patent No. 5,522,645 to Dahlbacka.

Talmon et al., as modified, disclose a molded article that is basically same as the recited in claims 13, 14, 16, and 17 except the rigid support lacks a rigid back and bottom support and the rigid support lacks a hollow interior with extensions, as recited in the claims. Dahlbacka shows a molded article similar to that of Talmon et al. wherein the rigid support has unitary seat back and bottom supports 12 (Fig. 6) with flexible cushions 14, 14A (Fig. 6) attached to the supports, and the rigid support also has a hollow interior (Fig. 6) abutting the flexible member and has anchoring extensions 18 (Fig. 8) extending into the flexible member. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the molded article of Talmon et al. such that the rigid support has unitary, rigid seat back and bottom supports and the flexible cushion has flexible cushions attached to the seat back and bottom supports, and the rigid support has a hollow interior abutting the flexible member and anchoring extensions extending in the flexible member further defining the perforations, such as the molded article disclosed in Dahlbacka.



**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to molded articles:

U.S. Pat. No. 2,390,878 to Greitzer

U.S. Pat. No. 3,233,885 to Propst

U.S. Pat. No. 3,565,486 to Channon

U.S. Pat. No. 4,418,958 to Watkin

U.S. Pat. No. 4,544,205 to Molnar

U.S. Pat. No. 5,536,065 to Girardi

U.S. Pat. No. 6,036,272 to Samples et al.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

  
JE  
April 7, 2003

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600